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COLLECTION OF BRIEFS IN THE LAW LIBRARY. — The board of student advisers has collected in a bound volume, now in the law-school library, all the briefs drawn up in the law clubs last year. A list of those submitted in the Ames Competition is found on page 466 of this Review. They were carefully prepared by second-year men at considerable length, and are at the service of lawyers who may be working on points of law similar to those involved.

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DEFENSES TO ACTION ON FOREIGN JUDGMENT. — By the civil law a foreign judgment, in the absence of treaty or statutory provision, is reviewable on the merits. When approved it is declared executory and enforced directly.[1] At common law the rule is otherwise. A foreign judgment is conclusive on the merits, because it creates an obligation which is recognized like any other foreign-acquired right.[2] This doctrine,

[1] Landesbrandcasse *v.* Assurances Belges, 21 Clunet 164, 3 Beale, Cases on Conflict of Laws, 365; Holker *v.* Parker, 21 Bulletin des Arrêts 119, 3 Beale, Cases on Conflict of Laws, 357. See 1 PIGGOTT, FOREIGN JUDGMENTS, 9.

[2] Bank of Australasia *v.* Nias, 16 Q. B. 717; Godard *v.* Gray, L. R. 6 Q. B. 139; Hampton *v.* McConnell, 3 Wheat. (U. S.) 234. The Supreme Court of the United States has made an exception in the case of judgments rendered in foreign countries whose laws do not reciprocate. Hilton *v.* Guyot, 159 U. S. 113, 16 Sup. Ct. 139. In Taylor *v.* Hollard, [1902] 1 K. B. 676, the English court recognized a foreign judgment rendered in derogation of an English judgment. In some jurisdictions it is held that a foreign judgment is merely *primâ facie* evidence of the cause of action for which it was rendered. Tourigny *v.* Houle, 88 Me. 406, 34 Atl. 158; Taylor *v.* Barron, 30 N. H. 78.

besides being consistent,[3] is supported by the strongest considerations of expediency,[4] and involves a wholesome recognition of the coördinate position of foreign courts.[5] The enforcement of a foreign judgment, however, requires a new judgment.[6]

Most of the defenses to an action upon a foreign judgment practically amount to a denial of the existence of the judgment. If the judgment was rendered without any real judicial proceedings, such as the decree of an arbitrary power,[7] or without going into the merits of the controversy, as in the case of a mere nonsuit,[8] it will not be recognized as conclusive. Want of jurisdiction on the part of the foreign court is the obvious and common basis of attack.[9] But it is not enough that the foreign court has made a mistake of procedure; there must be an absence of territorial jurisdiction by international law.[10] By the better view a judgment based upon a penalty will not be enforced outside the state of its rendition.[11] A sovereign might refuse to enforce a foreign judgment on grounds of policy,[12] although this is impossible in the United States in the case of sister-state judgments because of the federal Constitution.[13] But an obvious misinterpretation of the law of the forum will not prevent the enforcement of a foreign judgment.[14] Moreover, it is well established that the mere fact that an appeal has been taken does not affect the binding nature of a judgment.[15] Nor could the reversal of a judgment have any direct effect upon a foreign judgment even though the latter be based upon the reversed judgment.[16] This would seem obvious in view of the common-law conception of judgments as newly created rights.

In a recent New York case, however, the court considered the reversal of a Wisconsin judgment a defense to a California judgment based upon the reversed Wisconsin judgment. *Ellis* v. *Delafield*, 153 N. Y. App. Div. 26. The result may be properly reached only on the ground that the reversal of the Wisconsin judgment afforded an equitable de-

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[3] See 22 HARV. L. REV. 51.

[4] See STORY, CONFLICT OF LAWS, § 607.

[5] See 1 PIGGOTT, FOREIGN JUDGMENTS, 340, 355 ff.

[6] McElmoyle *v.* Cohen, 13 Pet. (U. S.) 312; Bennett *v.* Bennett, 63 N. J. Eq. 306, 49 Atl. 501. It seems unscientific to enforce one right by creating another independent right of equal dignity. For a discussion of the doctrine of merger, see 26 HARV. L. REV. 375.

[7] Sawyer *v.* Maine Fire and Marine Ins. Co., 12 Mass. 291.

[8] Hans *v.* Tierman, 53 Pa. St. 192.

[9] Buchanan *v.* Rucker, 9 East 192.

[10] Pemberton *v.* Hughes, [1899] 1 Ch. 781.

[11] State of Arkansas *v.* Bowen, 20 D. C. 291; Addams *v.* Worden, 6 L. C. 237. *Contra*, Spencer *v.* Brockway, 1 Oh. 259.

[12] *Cf.* Kaufman *v.* Gerson, [1904] 1 K. B. 591.

[13] Fauntleroy *v.* Lum, 210 U. S. 230, 28 Sup. Ct. 641.

[14] Godard *v.* Gray, *supra*; Fauntleroy *v.* Lum, *supra*.

[15] Parkhurst *v.* Berdell, 110 N. Y. 386, 18 N. E. 123; Paine *v.* Schenectady Ins. Co., 11 R. I. 411; Merchants' Ins. Co. *v.* De Wolf, 33 Pa. St. 45.

[16] State *v.* Tillotson, 85 Kan. 577, 117 Pac. 1030. See Parkhurst *v.* Berdell, 110 N. Y. 386, 392, 18 N. E. 123, 125–126. See Merchants' Ins. Co. *v.* De Wolf, 33 Pa. St. 45, 46. It seems that in such a case, the court may vacate the judgment on motion even after the term at which it was rendered, contrary to the general rule at common law. See Heckling *v.* Allen, 15 Fed. 196, Merchants' Ins. Co. *v.* De Wolf, *supra*. *Cf.* Ætna Ins. Co. *v.* Aldrich, 38 Wis. 107, 110–111.

fense, and was admissible at law under the reformed code of procedure.[17] The jurisdiction of equity to restrain a party from enforcing a judgment is undoubted.[18] Although the California judgment created a new right, it was based upon a presupposition that has failed, so that it would be unconscionable to enforce the right. Relief by direct proceeding in California is clearly inadequate under the circumstances. Moreover, the defense is not open to the practical objection that it involves a reopening of the California judgment on the merits. Hence the New York court might well exercise its equitable power to modify the legal situation as is commonly done in the case of mortgages. The precise manner of accomplishing the result, being a matter of procedure, is governed by the law of the forum. Thus fraud, although no legal defense to a judgment,[19] may be a reason for restraining its enforcement, and in jurisdictions allowing equitable defenses at law, may be set up in an action upon the judgment.[20]

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THE EFFECT OF CHANGING THE USE OF LAND TAKEN BY EMINENT DOMAIN. — Statutes conferring the power of eminent domain are strictly construed because the exercise of the power involves a compulsory taking of private property.[1] In the absence of clear language authorizing the taking of a greater interest, the interest which may be taken is a right to use the land for the public purpose specified,[2] and upon abandonment of this use the title of the original owner is unincumbered as before the condemnation.[3] The nature of the interest which may be condemned is a question for the legislature,[4] and a fee simple will pass to the person exercising the power if the statute so provides.[5] In such a case the original owner has no further interest in the land. He cannot

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[17] See N. Y. CODE CIV. PROC., § 507; Foot *v.* Sprague, 12 How. Pr. (N. Y.) 355.

[18] Pearce *v.* Olney, 20 Conn. 544.

[19] Christmas *v.* Russell, 5 Wall. (U. S.) 290; Mooney *v.* Hinds, 160 Mass. 469, 36 N. E. 484.

[20] Ward *v.* Quinlivin, 57 Mo. 425; Levin *v.* Gladstein, 142 N. C. 482, 55 S. E. 371.

[1] Washington Cemetery *v.* Prospect Park & Coney Island R. Co., 68 N. Y. 591. See 2 LEWIS, EMINENT DOMAIN, 3 ed., § 449.

[2] Washington Cemetery *v.* Prospect Park & Coney Island R. Co., *supra*; Attorney General *v.* Jamaica Pond Aqueduct Corporation, 133 Mass. 361. Ordinarily this right is called an easement. Proprietors of Locks and Canals on Merrimack River *v.* Nashua & Lowell R. Co., 104 Mass. 1. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 810. Where, as in the ordinary case, right to possession of the land is given, as where a railroad company condemns land for a right of way, some courts have held that this interest is not properly an easement, but is corporeal in its nature. Pennsylvania Schuylkill Valley R. *v.* Reading Paper Mills, 149 Pa. St. 18, 24 Atl. 205; Western Union Telegraph Co. *v.* Pennsylvania R. Co., 195 U. S. 540, 25 Sup. Ct. 133. These courts agree, however, that the original owner can restrain an unauthorized use of the land and that the land reverts to the original owner on abandonment of the use for which it was taken. Lance's Appeal, 55 Pa. St. 16; Lazarus *v.* Morris, 212 Pa. St. 128, 61 Atl. 815.

[3] Chambers *v.* Great Northern Power Co., 100 Minn. 214, 110 N. W. 1128; McCombs *v.* Stewart, 40 Oh. St. 647.

[4] Fairchild *v.* City of St. Paul, 46 Minn. 540, 49 N. W. 325.

[5] Heyward *v.* Mayor, etc. of New York, 7 N. Y. 314. *Contra*, Kellog *v.* Malin, 50 Mo. 496.